

SOLICITATION, OFFER, AND AWARD
(Construction, Alteration, or Repair)

OMB No. 0690-0008
Expiration Date: 11/30/98

1. SOLICITATION NO.	2. TYPE OF SOLICITATION	3. DATE ISSUED
	[] SEALED BID (IFB)	
52RANB00C019	[X] NEGOTIATED (RFP)	05/22/00

IMPORTANT-The "Offer" section on pages 2 and 3 must be fully completed by offeror.

4. CONTRACT NO.	5. REQUISITION/PURCHASE REQUEST NO.	6. PROJECT NO.
	NB361000001136	

7. ISSUED BY CODE	8. ADDRESS OFFER TO
BID DEPOSITORY, DOC, MASC, MC3	
Acquisition Management Div.	
325 Broadway	
Boulder, CO 80303-3328	

9.	FOR INFORMATION	A. NAME	B. TELEPHONE NO. (Include area code)
	CALL	Sheryl L. Winds	(NO COLLECT CALLS) 303.497.7943

SOLICITATION

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS (Title, identifying no., date):

Expand the Existing Gas Storage Area and Loading Dock at
Building 2, Department of Commerce, National Institute of
Standards and Technology, Boulder County, Boulder, Colorado.

Price Range: Between \$500,000 and \$1,000,000

11. The Contractor shall begin performance within 10 calendar days and complete it within 180 calendar days after receiving [] award [X] notice to proceed. This performance period is [X] mandatory [] negotiable. (See Section F).

EXCEPTION TO STANDARD FORM 1442 (REV.4-85)

Prescribed by GSA
FAR(48 CFR) 53.236-1(e)

SOLICITATION, OFFER, AND AWARD
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12A. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? (If "YES" indicate within how many calendar days after award in Item 12B.) [X] YES [] NO	12B. CALENDAR DAYS 10
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13. ADDITIONAL SOLICITATION REQUIREMENTS:

A. Sealed offers in original and 4 copies to perform the work required are due at the place specified in Item 8 by 3:00 P.M. (hour) local time _____ (date). If this is a sealed bid solicitation, offers must be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.

B. An offer guarantee [X] is, [] is not required.

C. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.

D. Offers providing less than 60 calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.

14. NAME AND ADDRESS OF OFFEROR (Include ZIP Code)	15. TELEPHONE NO. (Include area code) 16. REMITTANCE ADDRESS (Include only if different than Item 14)
CODE FACILITY CODE	

17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of this solicitation, if this offer is accepted by the Government in writing within _____ calendar days after the date offers are due. (Insert any number equal to or greater than the minimum requirement stated in Item 13D. Failure to insert any number means the offeror accepts the minimum in Item 13D.)

AMOUNTS	
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EXCEPTION TO STANDARD FORM 1442 (REV.4-85)

SOLICITATION, OFFER, AND AWARD
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18. The offeror agrees to furnish any required performance and payment bonds.

19. ACKNOWLEDGMENT OF AMENDMENTS

(The offeror acknowledges receipt of amendments to the solicitation - give number and date of each)

AMENDMENT NO.										
DATE										

20A. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)	20B. SIGNATURE	20C. OFFER DATE
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AWARD (To be completed by Government)

21. ITEMS ACCEPTED:

22. AMOUNT	23. ACCOUNTING AND APPROPRIATION DATA
24. SUBMIT INVOICES TO ADDRESS SHOWN IN ITEM _____ (4 copies unless otherwise specified)	25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO: [] 10 USC 2304(c) () [] 41 USC 253(c) ()
26. ADMINISTERED BY CODE _____	27. PAYMENT WILL BE MADE BY

EXCEPTION TO STANDARD FORM 1442 (REV.4-85)

SOLICITATION, OFFER, AND AWARD
(Construction, Alteration, or Repair)

CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE

[] 28. NEGOTIATED AGREEMENT (Contractor is required to sign this document and return _____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all work requirements identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications incorporated by reference in or attached to this contract.

[] 29. AWARD (Contractor is not required to sign this document.) Your offer on this solicitation is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.

30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN (Type or print)		31A. NAME OF CONTRACTING OFFICER (Type or print)	
30B. SIGNATURE	30C. DATE	31B. UNITED STATES OF AMERICA BY _____	31C. AWARD DATE

EXCEPTION TO STANDARD FORM 1442 (REV.4-85)

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PART I - THE SCHEDULE

SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS

This is a 100% Small Business Set-Aside. For the purpose of this procurement, the small business size standard is a concern, including its affiliates, having average annual sales or receipts for its preceding three fiscal years not in excess of \$17.0 million. The Standard Industrial Classification Code (SIC) is 1629.

Provide all labor, materials, documentation, and equipment to Expand existing gas storage area and loading dock at Building 2, Department of Commerce, National Institute of Standards and Technology, 325 Broadway, Boulder, Colorado.

ITEM				UNIT	
NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	PRICE	AMOUNT

0001	Expand Existing Gas Storage Area and Loading Dock at Building 2.	LUMP SUM		\$	
0002	Performance and Payment Bonds	LUMP SUM		\$	
Total (Items 0001 and 0002)				\$	

IN ACCORDANCE WITH THE FOLLOWING TERMS AND CONDITIONS:

SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT

C.1 STATEMENT OF WORK/SPECIFICATIONS

The Contractor shall furnish the necessary personnel, material, equipment, services and facilities (except as otherwise specified), to perform the Statement of Work/Specifications referenced in Section J, Attachment Number 1..

C.2 Work Hours

All work required under this solicitation/contract shall be performed during the hours of 7:00 A.M. to 5:00 P.M., Monday through Friday. Request for out-of-hours work shall be submitted to the Contracting Officer's Technical Representative for approval.

C.3 USE OF FACILITIES (APR 1984)

The Contractor will be given storage space at the project's location for equipment and supplies required for the project. Protection of the Contractor's supplies and equipment shall be the responsibility of the Contractor.

C.4 SITE CLEARANCE

Arrangements for clearance for address to the work area shall be conducted with the Department of commerce Boulder Laboratories Security Office in Boulder, Colorado. Security shall be notified when construction personnel arrive on site and when they leave.

C.5 SUITABILITY/RISK ASSESSMENT Contractor/subcontractor
Personnel Working on a Department of Commerce Site -Low
Risk Contracts.

A. Security Processing Requirements

(1) U.S. Citizens Working on DoC Site

All contractor (and subcontractor) personnel proposed to work on the premises of a Department of Commerce site for 180 days or more must undergo security processing by the Department's Office of Security (OSY) to be eligible to work on the site.

(2) Foreign Nationals (Non-U.S. Citizens)

C.5 (Continued)

Regardless of anticipated length of on-site work, all foreign nationals to be employed under this contract must:

- (a) Have legal visa status with the Immigration and Naturalization Service (INS);
- (b) Have advance approval from the servicing Security Officer in consultation with the Office of Security.

B. Submittal Requirements U.S. Citizens

- (1) Duration of On-site Work: 180 to 364 days (between 6 months and 1 year)

For individuals who will be performing work on a DoC site between 180 and 364 days, the Department will perform a Special Agreement Check (SAC). The scope of the SAC include checks of the Security/Suitability Investigations Index (SII), other agency files (INVA), Defense Clearance Investigations Index (DCII), FBI Fingerprint (FBIF), and the FBI Information Management Division (FBIN).

The Contractor must complete and submit the following form to the Contracting Officer's Technical Representative (COTR):

Form FD-258 (Fingerprint Chart).

Copies of this form can be obtained from the COTR. Upon receipt of the FD-258, the COTR will complete form OFI 86C (Special Agreement Check) and will forward both to the operating unit Security Officer. The security officer will advise the COTR whether work can commence prior to the suitability determination, based on the specifics of the situation. The COTR will notify the Contractor of an approved contract start date as well as favorable findings of the suitability determination.

- (2) Duration of Onsite Work: 365 days (1 year) or more

Individuals proposed to perform work on a DoC site for 1 year (365 days) or more are required to have a NACI check (National Agency Check Plus Written Inquiries)

The Contractor must complete and submit the following forms to the Contracting Officer's Technical Representative (COTR):

Standard Form 85P (SF-85P, Questionnaire for Public Trust Positions), and
FD-258 (Fingerprint Chart).

Copies of these forms can be obtained from the COTR. Upon

C.5 (Continued)

receipt of the required forms, the COTR will forward the forms to the operating unit Security Officer. The security officer will advise the COTR whether work can commence prior to the suitability determination, based on the specifics of the situation. The COTR will notify the Contractor of an approved contract start date as well as favorable findings of the suitability determination.

C. Submittal Requirements - Foreign Nationals

All foreign nationals proposed to work on a DoC site will be subject to a Special Agreement Check (SAC) to determine whether the foreign national has official legal status in the United States.

The Contractor must submit the following forms to the COTR for all foreign nationals proposed to work on a DoC site:

FD-258 (Fingerprint Chart)
Form OFI 86C (Special Agreement Check)
with signature authorization for release of information

Copies of these forms can be obtained from the COTR. Upon receipt of the required forms, the COTR will forward the forms to the operating unit Security Officer. The COTR will notify the Contractor of favorable findings and will notify the Contractor regarding an approved date to commence work under the contract.

D. Suitability Updates

Any individual (including foreign nationals) processed on the form OFI-86C (Special Agreement Check) who stays on the contract over 364 days will be required to have a NACI suitability check to stay on the job site.

E. Notification of Disqualifying Information

If OSY receives disqualifying information on a contract employee, the Contractor, upon notification of such by the Contracting Officer, must immediately remove the employee from duties which require access to DOC facilities.

Individuals may be barred from working on the premises of a facility for any of the following:

1. Conviction of a felony or a crime of violence or of a misdemeanor involving moral turpitude.
2. Falsification of information entered on security screening forms or on other documents submitted to the Department.
3. Improper conduct once performing on the contract, including

C.5 (Continued)

criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government regardless of whether the conduct directly related to the contract.

4. Any behavior judged to pose a potential threat to departmental personnel or property.

Failure to comply with the requirements may result in termination of this contract. Compliance with these requirements shall not be construed as providing a contract employee clearance to have access to classified information.

C.6 REQUIRED FORMS

The Government shall provide the Contractor with five copies of FD-258 at the time of award; Contractor shall be responsible for reproducing and utilizing OFI 86-C from Attachment 5 hereof. The forms shall be completed as indicated in the "Instructions for Required Forms" in Attachment 5.

SECTION D - PACKAGING AND MARKING

THERE ARE NO CLAUSES INCLUDED IN THIS SECTION

SECTION E - INSPECTION AND ACCEPTANCE

E.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://www.arnet.gov/far/loadmain52.html>

I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

NUMBER	TITLE	DATE
52.246-12	INSPECTION OF CONSTRUCTION	AUG 1996

E.2 INSPECTION AND ACCEPTANCE

(a) The Contracting Officer or the duly authorized representative will perform inspection and acceptance of supplies and services to provided under this contract.

(b) Inspection and acceptance will be performed at:

Department of Commerce/NIST
325 Broadway, Bldg. 2
Boulder, CO 80303-3328

SECTION F - DELIVERIES OR PERFORMANCE

F.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://www.arnet.gov/far/loadmain52.html>

I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

NUMBER	TITLE	DATE
52.242-14	SUSPENSION OF WORK	APR 1984

F.2 52.211-10 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984)

The Contractor shall be required to (a) commence work under this contract within 10 calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than 180 calendar days. The time stated for completion shall include final cleanup of the premises.

SECTION G - CONTRACT ADMINISTRATION DATA

G.1 CONTRACTING OFFICER'S TECHNICAL
REPRESENTATIVE (COTR)

(a) (To be designated at time of award), is hereby designated as the Contracting Officer's Technical Representative. The COTR may be changed at any time by the Government without prior notice to the contractor but notification of the change, including the name and address of the successor COTR, will be promptly provided to the Contractor by the Contracting Officer in writing. The COTR is located at the U.S. Department of Commerce, _____
_____. His telephone number is Area Code _____.

(b) The responsibilities and limitations of the COTR are as follows:

- (1) The Contracting Officer's Technical Representative is responsible for the technical aspects of the project and technical liaison with the Contractor. The COTR is also responsible for the final inspection and acceptance of all reports, and such other responsibilities as may be specified in the contract.
- (2) The COTR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes which affect the Contract price, terms or conditions. Any Contractor request for changes shall be referred to the Contracting Officer directly or through the COTR. No such changes shall be made without the expressed prior authorization of the Contracting Officer. The COTR may designate assistant COTR(s) to act for him by naming such assistant in writing and transmitting a copy of such designation through the Contracting Officer to the Contractor.

G.2 CONTRACTING OFFICER'S AUTHORITY

The Contracting Officer is the only person authorized to make or approve any changes in any of the requirements of this contract, notwithstanding any clauses contained elsewhere in this contract. In the event that the Contractor makes any changes at the direction of any person other than the Contracting Officer, the change will be considered to have been made without authority, and no adjustment will be made in the contract price to cover any increase in costs incurred as a result thereof.

SECTION H - SPECIAL CONTRACT REQUIREMENTS

H.1 AVAILABILITY AND USE OF UTILITY SERVICES

In accordance with FAR 52.236-14, Availability and Use of Utility Services, the following utility services will be made available under the contract:

Electricity (20AMP, 120V) and water

H.2 NOTICE OF REQUIRED PERFORMANCE SECURITY

If a contract exceeds \$100,000, the successful offeror shall furnish security to guarantee faithful performance of the contract in the amount of 100 percent of the total contract price. Security may be in the form of a performance bond on Standard Form 25 (furnished on request), or in the form of a certified or cashier's check, bank draft, Post Office money order, or currency, or United States Government bonds or notes (at par value) deposited in accordance with Treasury Regulations. Money orders and checks shall be drawn payable to: U.S. Department of Commerce.

H.3 NOTICE OF REQUIRED PAYMENT SECURITY

If a contract exceeds \$100,000, the successful offeror shall furnish security to guarantee payment to all persons supplying labor or materials in the performance of the contract. Such security may be in the form of a payment bond on Standard Form 25A (furnished on request) or in the form of a certified or cashier's check, bank draft, Post Office money order, or currency, or United States Government bonds or notes (at par value) deposited in accordance with Treasury Regulations. Money orders and checks shall be drawn payable to: U.S. Department of Commerce. The penal sum of the payment bond shall equal:

- (a) 50 percent of the contract price, if the contract price is not more than \$1 million;
- (b) 40 percent of the contract price, if the contract price is more than \$1 million but not more than \$5 million; or
- (c) \$2-1/2 million, if the contract price is more than \$5 million.

H.4 INSURANCE COVERAGE

Pursuant to the clause "Insurance - Work on a Government Installation (FAR 52.228-5)," the Contractor will be required to present evidence to show, as a minimum, the amounts of insurance coverage indicated below:

H.4 (Continued)

- (a) Workers Compensation and Employer's Liability. The Contractor is required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a Contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least \$100,000 shall be required, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers.
- (b) General Liability. The Contractor shall have bodily injury liability insurance coverage written on the comprehensive form of policy of at least \$500,000 per occurrence.
- (c) Automobile Liability. The Contractor shall have automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage.
- (d) Aircraft Public and Passenger Liability. When aircraft are used in connection with performing the contract, the Contractor shall have aircraft public and passenger liability insurance. Coverage shall be at least \$200,000 per person and \$500,000 per occurrence for bodily injury, other than passenger liability, and \$200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.

H.5 SAMPLES AND CERTIFICATES

When required by the specifications or the Contracting Officer, samples, certificates, and test data shall be submitted after award of the contract, prepaid, in time for proper action by the Contracting Officer or his/her designated representative. Certificates and test data shall be submitted in triplicate to show compliance of materials and construction specified in the contract performance requirements. Samples shall be submitted in duplicate by the Contractor, except as otherwise specified, to show compliance with the contract requirements. Materials or equipment for which samples, certifications or test data are required shall not be used in the work until approved in writing

H.5 (Continued)

by the Contracting Officer.

H.6 STATE OF COLORADO TAX PROVISIONS

Colorado Revised Statute Section 39-26-114, Exemptions--disputes--credits or refunds, provides:

"(1) (a) There shall be exempt from taxation under the provisions of this part 1 the following:

"(XIX) All sales of construction and building materials to contractors and subcontractors for use in the building, erection, alteration, or repair of structures, highways, roads, streets, and other public works owned and used by:

"(A) The United States government...in [its] governmental capacity[y] only;...."

Pricing under this solicitation/contract shall not include State of Colorado taxes as identified above.

Contractors shall file a Form 172 with the Colorado Department of Revenue, Taxpayer Services Division, 1375 Sherman Street, Room 242, Denver, CO 80261, 303/534-1208 to get an exemption number in order for the exemption to apply. (Reference Subsection I.1, FAR clause entitled "Federal, State, and Local Taxes")

H.7 RESPONSIBILITY FOR LOSS, DAMAGE, DEATH OR INJURY

Except as otherwise provided by law, the Government will not be responsible for the loss of, or damage to the Contractor's equipment, or death of, or injury to the Contractor's personnel, or for death of, or injury to persons, or for damages to property resulting from Contractor's negligent performance under this contract. The Contractor shall be responsible for all damages to persons or property that occur as a result of his fault or negligence, or the fault or negligence of his employees or agents, while performing the requirements of this contract.

PART II - CONTRACT CLAUSES

SECTION I - CONTRACT CLAUSES

I.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://www.arnet.gov/far/loadmain52.html>

I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

NUMBER	TITLE	DATE
52.202-1	DEFINITIONS Alternate I (APR 1984)	OCT 1995
52.203-3	GRATUITIES	APR 1984
52.203-5	COVENANT AGAINST CONTINGENT FEES	APR 1984
52.203-7	ANTI-KICKBACK PROCEDURES	JUL 1995
52.204-4	PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER	JUN 1996
52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT	JUL 1995
52.215-2	AUDIT AND RECORDS--NEGOTIATION	JUN 1999
52.215-8	ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT	OCT 1997
52.219-6	NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE	JUL 1996
52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS	OCT 1999
52.219-14	LIMITATIONS ON SUBCONTRACTING	DEC 1996
52.222-3	CONVICT LABOR	AUG 1996
52.222-4	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION	JUL 1995
52.222-6	DAVIS-BACON ACT	FEB 1995
52.222-7	WITHHOLDING OF FUNDS	FEB 1988
52.222-8	PAYROLLS AND BASIC RECORDS	FEB 1988
52.222-9	APPRENTICES AND TRAINEES	FEB 1988
52.222-10	COMPLIANCE WITH COPELAND ACT REQUIREMENTS	FEB 1988
52.222-11	SUBCONTRACTS (LABOR STANDARDS)	FEB 1988

I.1 (Continued)

NUMBER	TITLE	DATE
52.222-12	CONTRACT TERMINATION - DEBARMENT	FEB 1988
52.222-13	COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS	FEB 1988
52.222-14	DISPUTES CONCERNING LABOR STANDARDS	FEB 1988
52.222-15	CERTIFICATION OF ELIGIBILITY	FEB 1988
52.222-21	PROHIBITION OF SEGREGATED FACILITIES	FEB 1999
52.222-26	EQUAL OPPORTUNITY	FEB 1999
52.222-27	AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION	FEB 1999
52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES	JUN 1998
52.222-37	EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA	JAN 1999
52.223-6	DRUG-FREE WORKPLACE	JAN 1997
52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES	FEB 2000
52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT	AUG 1996
52.227-4	PATENT INDEMNITY - CONSTRUCTION CONTRACTS	APR 1984
52.228-2	ADDITIONAL BOND SECURITY	OCT 1997
52.228-5	INSURANCE - WORK ON A GOVERNMENT INSTALLATION	JAN 1997
52.228-12	PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS	OCT 1995
52.228-15	PERFORMANCE AND PAYMENT BONDS-- CONSTRUCTION	SEP 1996
52.229-4	FEDERAL, STATE, AND LOCAL TAXES (NONCOMPETITIVE CONTRACT)	JAN 1991
52.229-5	TAXES - CONTRACTS PERFORMED IN U.S. POSSESSIONS OR PUERTO RICO	APR 1984
52.232-5	PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS	MAY 1997
52.232-8	DISCOUNTS FOR PROMPT PAYMENT	MAY 1997
52.232-17	INTEREST	JUN 1996
52.232-23	ASSIGNMENT OF CLAIMS	JAN 1986
52.232-27	PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS	JUN 1997
52.233-1	DISPUTES Alternate I (DEC 1991)	DEC 1998
52.232-34	PAYMENT BY ELECTRONIC FUNDS TRANSFER--OTHER THAN CENTRAL CONTRACTOR REGISTRATION	MAY 1999
52.233-3	PROTEST AFTER AWARD	AUG 1996
52.236-2	DIFFERING SITE CONDITIONS	APR 1984

I.1 (Continued)

NUMBER	TITLE	DATE
52.236-3	SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK	APR 1984
52.236-5	MATERIAL AND WORKMANSHIP	APR 1984
52.236-6	SUPERINTENDENCE BY THE CONTRACTOR	APR 1984
52.236-7	PERMITS AND RESPONSIBILITIES	NOV 1991
52.236-8	OTHER CONTRACTS	APR 1984
52.236-9	PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS	APR 1984
52.236-10	OPERATIONS AND STORAGE AREAS	APR 1984
52.236-11	USE AND POSSESSION PRIOR TO COMPLETION	APR 1984
52.236-12	CLEANING UP	APR 1984
52.236-13	ACCIDENT PREVENTION	NOV 1991
52.236-14	AVAILABILITY AND USE OF UTILITY SERVICES	APR 1984
52.236-15	SCHEDULES FOR CONSTRUCTION CONTRACTS	APR 1984
52.236-17	LAYOUT OF WORK	APR 1984
52.236-21	SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION	FEB 1997
52.236-26	PRECONSTRUCTION CONFERENCE	FEB 1995
52.242-13	BANKRUPTCY	JUL 1995
52.243-4	CHANGES	AUG 1987
52.244-5	COMPETITION IN SUBCONTRACTING	DEC 1996
52.246-21	WARRANTY OF CONSTRUCTION Alternate I (APR 1984)	MAR 1994
52.248-3	VALUE ENGINEERING - CONSTRUCTION	FEB 2000
52.249-2	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) Alternate I (SEP 1996)	SEP 1996
52.249-10	DEFAULT (FIXED-PRICE CONSTRUCTION)	APR 1984
52.253-1	COMPUTER GENERATED FORMS	JAN 1991

I.2 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may--

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which--

I.2 (Continued)

- (i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27 (a) or (b) of the Act for the purpose of either--
 - (A) Exchanging the information covered by such subsections for anything of value; or
 - (B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or
 - (ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsections 27(e) (1) of the Act.
- (b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
- (c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

I.3 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN
FEDERAL TRANSACTIONS (DEVIATION NOV 1990) (JUN 1997)

(a) Definitions.

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

- (1) The awarding of any Federal contract;
- (2) The making of any Federal grant;
- (3) The making of any Federal loan;
- (4) The entering into of any cooperative agreement; and,
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

I.3 (Continued)

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services as defined in subsection 101(3), title 37, United States Code.
- (3) A special Government employee, as defined in section 202, title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not

I.3 (Continued)

furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

(1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure

I.3 (Continued)

if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

- (3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b) (1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b) (3) (i) (A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action--

(1) Providing any information not specifically requested but necessary for an agency to

I.3 (Continued)

make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b) (3) (i) (A) of this clause are permitted under this clause.

(ii) Professional and technical services.

(A) The prohibition on the use of appropriated funds, in subparagraph (b) (1) of this clause, does not apply in the case of--

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or any extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a

I.3 (Continued)

person requesting or receiving a covered Federal action include consultants and trade associations.

- (B) For purposes of subdivision (b) (3) (ii) (A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
- (C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- (D) Only those services expressly authorized by subdivisions (b) (3) (ii) (A) (1) and (2) of this clause are permitted under this clause.

I.3 (Continued)

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iii) Selling activities by independent sales representatives.

The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply to the following sales activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter;

(A) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and

(B) Technical discussions and other activities regarding the application or adoption of the person's products or services for an agency's use.

(c) Disclosure.

(1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes--

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

I.3 (Continued)

- (ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - (iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or received any subcontract exceeding \$100,000 under the Federal contract.
- (4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.
- (d) Agreement. The Contractor agrees not to make any payment prohibited by this clause.
- (e) Penalties.
 - (1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.
 - (2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.
- (f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

I.4 52.222-35 AFFIRMATIVE ACTION FOR SPECIAL DISABLED
AND VIETNAM ERA VETERANS (APR 1984) (DEVIATION)

(a) Definitions.

"Appropriate office of the State employment service system," as used in this clause, means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

"Openings that the Contractor proposes to fill from within its own organization," as used in this clause, means employment openings for which no one outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) will be considered and includes any openings that the Contractor proposes to fill from regularly established "recall" lists.

"Openings that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this clause, means employment openings that the Contractor proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.

"Suitable employment openings," as used in this clause-

(1) Includes, but is not limited to, openings that occur in jobs categorized as-

- (i) Production and nonproduction;
- (ii) Plant and office;
- (iii) Laborers and mechanics;
- (iv) Supervisory and nonsupervisory;
- (v) Technical; and
- (vi) Executive, administrative, and professional positions compensated on a salary basis of less than \$25,000 a year; and

(2) Includes full-time employment, temporary employment of over 3 days, and part-time employment, but not openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.

I.4 (Continued)

(b) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as-

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing openings. (1) The Contractor agrees to list all suitable employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.

(3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona

I.4 (Continued)

vide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (i) the Government's needs cannot reasonably be supplied, (ii) listing would be contrary to national security, or (iii) the requirement of listing would not be in the Government's interest.

(d) Applicability. (1) This clause does not apply to the listing of employment openings which occur and are filled outside the 50 States, the District of Columbia, Puerto Rico, Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(2) The terms of paragraph (c) above of this clause do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(e) Postings. (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs,

I.4 (Continued)

Department of Labor (Director), and provided by or through the Contracting Officer.

- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified special disabled and Vietnam Era veterans.
- (f) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (g) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

I.5 52.225-9 BUY AMERICAN ACT--BALANCE OF PAYMENTS
PROGRAM--CONSTRUCTION MATERIALS (FEB 2000)

(a) Definitions. As used in this clause--

"Component" means any article, material, or supply incorporated directly into construction materials.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means--

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or

I.5 (Continued)

not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic construction material" means--

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

"Foreign construction material" means a construction material other than a domestic construction material.

"United States" means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) Domestic preference.

- (1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) and the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b) (2) and (b) (3) of this clause.
- (2) This requirement does not apply to the construction material or components listed by the Government as follows:
- (3) The Contracting Officer may add other foreign construction material to the list in paragraph (b) (2) of this clause if the Government determines that

- (i) The cost of domestic construction material would

I.5 (Continued)

be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent. For determination of unreasonable cost under the Balance of Payments Program, the Contracting Officer will use a factor of 50 percent;

- (ii) The application of the restriction of the Buy American Act or Balance of Payments Program to a particular construction material would be impracticable or inconsistent with the public interest; or
- (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act or Balance of Payments Program.

- (1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b) (3) of this clause shall include adequate information for Government evaluation of the request, including--
 - (A) A description of the foreign and domestic construction materials;
 - (B) Unit of measure;
 - (C) Quantity;
 - (D) Price;
 - (E) Time of delivery or availability;
 - (F) Location of the construction project;
 - (G) Name and address of the proposed supplier; and
 - (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b) (3) of this clause.

- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed

I.5 (Continued)

price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act or Balance of Payments Program applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b) (3) (i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act or Balance of Payments Program applies, use of foreign construction material is noncompliant with the Buy American Act or Balance of Payments Program.

(d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
Item 2:			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

I.5 (Continued)

*Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

I.6 52.228-11 PLEDGES OF ASSETS (FEB 1992)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond--

(1) Pledge of assets; and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of--

(1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in FAR 28.203-2 (except see 28.203-2(b)(2) with respect to Government securities held in book entry form) and/or;

(2) A recorded lien on real estate. The offeror will be required to provide--

(i) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203-3(d);

(ii) Evidence of the amount due under any encumbrance shown in the evidence of title;

I.6 (Continued)

- (iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

I.7 52.228-14 IRREVOCABLE LETTER OF CREDIT (DEC 1999)

- (a) "Irrevocable letter of credit" (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Government (the beneficiary) of a written demand therefor. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.
- (b) If the offeror intends to use an ILC in lieu of a bid bond, or to secure other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.
- (c) The letter of credit shall be irrevocable, shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and--
 - (1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;
 - (2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Contracting Officer provides the financial institution with a written statement waiving the right to payment.

I.7 (Continued)

The period of required coverage shall be:

- (i) For contracts subject to the Miller Act, the later of--
 - (A) One year following the expected date of final payment;
 - (B) For performance bonds only, until completion of any warranty period; or
 - (C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.
- (ii) For contracts not subject to the Miller Act, the later of--
 - (A) 90 days following final payment; or
 - (B) For performance bonds only, until completion of any warranty period.
- (d) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. The offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.
- (e) The following format shall be used by the issuing financial institution to create an ILC:

[Issuing Financial Institution's Letterhead
or Name and Address]

Issue Date _____

IRREVOCABLE LETTER OF CREDIT NO. _____

Account party's name _____

Account party's address _____

For Solicitation No. _____

(For reference only)

TO: [U.S. Government agency]

[U.S. Government agency's address]

I.7 (Continued)

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States \$_____. This Letter of Credit is payable at [issuing financial institution's and, if any, confirming financial institution's] office at [issuing financial institution's address and, if any, confirming financial institution's address] and expires with our close of business on _____, or any automatically extended expiration date.
2. We hereby undertake to honor your or the transferee's sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.
3. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.
4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of the Government (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.
5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution, if any, otherwise state of issuing financial institution].

I.7 (Continued)

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

[Issuing financial institution]

- (f) The following format shall be used by the financial institution to confirm an ILC:

_____ [Confirming
Financial Institution's Letterhead or Name and Address]--

(DATE) _____

Our Letter of Credit

Advice Number _____

Beneficiary: _____

[U.S. Government agency]

Issuing Financial Institution: _____

Issuing Financial Institution's LC No.: _____

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by _____ [name of issuing financial institution] for drawings of up to United States dollars _____/U.S. \$_____ and expiring with our close of business on _____ [the expiration date], or any automatically extended expiration date.
2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at _____.
3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.
4. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

I.7 (Continued)

- (a) At least 60 days prior to any such expiration date, we shall notify the Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or
- (b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

- 5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution].
- 6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

[Confirming financial institution]

- (g) The following format shall be used by the Contracting Officer for a sight draft to draw on the Letter of Credit:

SIGHT DRAFT

[City, State]

(DATE) _____

[Name and address of financial institution]

Pay to the order of _____

[Beneficiary Agency] _____

the sum of United States \$ _____

This draft is drawn under

Irrevocable Letter of Credit No. _____

[Beneficiary Agency]

I.7 (Continued)

By: _____

I.8 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.
- (b) The use in this solicitation or contract of any Commerce Acquisition Regulation clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

I.9 PATENT NOTIFICATION PROCEDURES REQUIRED BY THE NORTH AMERICAN FREE TRADE AGREEMENT

Pursuant to Executive Order 12889, the Department of Commerce (DoC) is required to notify the owner of any valid patent covering technology whenever the DoC or its contractors, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the contractor uses or has used patented technology under this award without a license or permission from the owner, the contractor must notify the DoC Patent Counsel at the following address, with a copy to the Contracting Officer:

Department of Commerce
Office of Chief Counsel for Technology
Patent Counsel
14th Street and Constitution Avenue, N.W. Room H-4610
Washington, DC 20230

The notification shall include the following information:

- the contract award number
- the name of the DoC awarding agency
- a copy of the patent
- a description of how the patented technology was used.
- the name of the contractor's contact, including an address and telephone number.

PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS

SECTION J - LIST OF ATTACHMENTS

J.1 LIST OF ATTACHMENTS-STATEMENT OF WORK/SPECIFICATIONS
THAT ARE HEREBY MADE A PART OF THIS SOLICITATION AND
ANY RESULTANT CONTRACT

1. Specifications-To Expand Gas Storage Area and Loading Dock
at Building 2, North Dock
2. Schematic Drawings, Bldg. 2, North Dock-Expand Gas
Storage, Pages 1-17
3. DoL General Decision No. CO000004, Mod. 0
4. SF LLL and LLL-A, Disclosure of Lobbying Activities
5. Suitability/Risk Assessment Instructions and Forms

J.2 LIST OF ATTACHMENTS FOR INFORMATION PURPOSES ONLY

6. Past Performance Information Forms
7. Client Authorization Letter (Optional)

PART IV - REPRESENTATIONS AND INSTRUCTIONS

SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND
OTHER STATEMENTS OF OFFERORSK.1 52.203-2 CERTIFICATE OF INDEPENDENT PRICE
DETERMINATION (APR 1985)

(a) The offeror certifies that--

- (1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;
- (2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- (3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory--

- (1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a) (1) through (a) (3) of this provision; or
- (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a) (1) through (a) (3) of this provision

[Insert full name of person(s) in the offeror's organization responsible for determining the

K.1 (Continued)

prices offered in this bid or proposal, and the title of his or her position in the offeror's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision.

(c) If the offeror deletes or modifies subparagraph (a)(2) of this provision, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

K.2 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING
PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS
DEVIATION (JAN 1990)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that--

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a

K.2 (Continued)

Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer, and

- (3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend this disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

K.3 52.204-3 TAXPAYER IDENTIFICATION (OCT 1998)

- (a) Definitions.

"Common parent," as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

"Taxpayer Identification Number (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

- (b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.
- (c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the

K.3 (Continued)

accuracy of the offeror's TIN.

(d) Taxpayer Identification Number (TIN).

☐ TIN:_____.

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of the Federal Government.

(e) Type of organization.

☐ Sole proprietorship;

☐ Partnership;

☐ Corporate entity (not tax-exempt);

☐ Corporate entity (tax-exempt);

☐ Government entity (Federal, State, or local);

☐ Foreign government;

☐ International organization per 26 CFR 1.6049-4;

☐ Other_____.

(f) Common parent.

☐ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

☐ Name and TIN of common parent:

K.3 (Continued)

Name _____

TIN _____

K.4 52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS
(MAR 1996)

(a) (1) The Offeror certifies, to the best of its knowledge and
belief, that--

(i) The Offeror and/or any of its Principals--

(A) Are () are not () presently debarred,
suspended, proposed for debarment, or declared
ineligible for the award of contracts by any
Federal agency;

(B) Have () have not (), within a three-year
period preceding this offer, been convicted of
or had a civil judgment rendered against them
for: commission of fraud or a criminal offense
in connection with obtaining, attempting to
obtain, or performing a public (Federal, state,
or local) contract or subcontract; violation of
Federal or state antitrust statutes relating to
the submission of offers; or commission of
embezzlement, theft, forgery, bribery,
falsification or destruction of records, making
false statements, tax evasion, or receiving
stolen property; and

(C) Are () are not () presently indicted for,
or otherwise criminally or civilly charged by a
governmental entity with, commission of any of
the offenses enumerated in subdivision
(a) (1) (i) (B) of this provision.

(ii) The Offeror has () has not (), within a
three-year period preceding this offer, had one or
more contracts terminated for default by any
Federal agency.

(2) "Principals," for the purposes of this certification,
means officers; directors; owners; partners; and, persons
having primary management or supervisory responsibilities
within a business entity (e.g., general manager; plant

K.4 (Continued)

manager; head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

- (b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.
- (d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

K.5 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS (MAY 1999)

- (a) (1) The standard industrial classification (SIC) code for this acquisition is 1629.
- (2) The small business size standard is \$17.0 million average annual receipts for an offeror's preceeding 3 fiscal years.
- (3) The small business size standard for a concern which submits an offer in its own name, other than on a

K.5 (Continued)

construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) Representations.

- (1) The offeror represents as part of its offer that it [] is, [] is not a small business concern.
- (2) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, for general statistical purposes, that it [] is, [] is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.
- (3) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents as part of its offer that it [] is, [] is not a women-owned small business concern.

(c) Definitions.

"Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and the size standard in paragraph (a) of this provision.

"Women-owned small business concern," as used in this provision, means a small business concern--

- (1) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

(d) Notice.

- (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.
- (2) Under 15 U.S.C. 645(d), any person who misrepresents a

K.5 (Continued)

firm's status as a small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall--

- (i) Be punished by imposition of fine, imprisonment, or both;
- (ii) Be subject to administrative remedies, including suspension and debarment; and
- (iii) Be ineligible for participation in programs conducted under the authority of the Act.

K.6 52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS
(FEB 1999)

The offeror represents that--

- (a) It [] has, [] has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;
- (b) It [] has, [] has not filed all required compliance reports; and
- (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

K.7 DATA UNIVERSAL NUMBER SYSTEM (DUNS)

- (a) The offeror is requested to insert the DUNS number to the contractor's address shown on the solicitation form.

DUNS NO.

- (b) If DUNS numbers have not been established for the contractor, a number will be assigned upon request by Dun & Bradstreet, phone 1-800-234-3867.

K.8 BANK INFORMATION

- a. Name and address of your firm's banking institution.

K.8 (Continued)

b. Your firm's account number at the banking institution.

c. Name and phone number of the banking institution's officer
in charge of your account.

K.9 CERTIFICATION

I hereby certify that the responses to the above
Representations, Certifications and other statements are accurate
and complete.

Signature: _____

Title: _____

Date: _____

SECTION L - INSTRUCTIONS, CONDITIONS, AND
NOTICES TO OFFERORS

L.1 52.252-1 SOLICITATION PROVISIONS INCORPORATED
BY REFERENCE (FEB 1998)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

<http://www.arnet.gov/far/loadmain52.html>

I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1)
PROVISIONS

NUMBER	TITLE	DATE
52.204-6	DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER	JUN 1999
52.211-6	BRAND NAME OR EQUAL	AUG 1999
52.215-16	FACILITIES CAPITAL COST OF MONEY	OCT 1997
52.222-23	NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION	FEB 1999

L.2 52.216-1 TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a firm-fixed price contract resulting from this solicitation.

L.3 NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE
EQUAL EMPLOYMENT OPPORTUNITY

In accordance with FAR 52.222-23, Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity, the following terms apply:

The covered area is (Boulder, Boulder County, Colorado.

Goals:

L.3 (Continued)

Trade	GOALS	
	Minority Participation	Female Participation
ALL	13-14%	6.9%

L.4 52.225-10 NOTICE OF BUY AMERICAN ACT/BALANCE OF
PAYMENTS PROGRAM REQUIREMENT--CONSTRUCTION
MATERIAL (FEB 2000)

- (a) Definitions. "Construction material, domestic construction material, and foreign construction material", as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act--Balance of Payments Program--Construction Materials" (Federal Acquisition Regulation (FAR) clause 52.225-9).
- (b) Requests for determinations of inapplicability. An offeror requesting a determination regarding the inapplicability of the Buy American Act or Balance of Payments Program should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-9 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act or Balance of Payments Program before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.
- (c) Evaluation of offers.
- (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act or Balance of Payments Program, based on claimed unreasonable cost of domestic construction material, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b) (3) (i) of the clause at FAR 52.225-9.
 - (2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.
- (d) Alternate offers.

L.4 (Continued)

- (1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225-9, the offeror also may submit an alternate offer based on use of equivalent domestic construction material.
- (2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR 52.225-9 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.
- (3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR 52.225-9 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested--
 - (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
 - (ii) May be accepted if revised during negotiations.

L.5 52.228-1 BID GUARANTEE (SEP 1996)

- (a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.
- (b) The bidder shall furnish a bid guarantee in the form of a firm commitment, e.g., bid bond supported by good and sufficient surety or sureties acceptable to the Government, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds, (1) to unsuccessful bidders as soon as practicable after the opening of bids, and (2) to the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.
- (c) The amount of the bid guarantee shall be percent of the bid price or , whichever is less.

L.5 (Continued)

- (d) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the bidder, the Contracting Officer may terminate the contract for default.
- (e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

L.6 52.236-27 SITE VISIT (CONSTRUCTION) (FEB 1995)

- (a) The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed.
- (b) Site visits may be arranged during normal duty hours by contacting:

Name:

Address:

Telephone:

L.7 52.252-5 AUTHORIZED DEVIATIONS IN PROVISIONS
(APR 1984)

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the provision.
- (b) The use in this solicitation or contract of any Commerce Acquisition Regulation provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

L.8 REGULATORY NOTICE

Offerors are advised that certain provisions and clauses identified with a Commerce Acquisition Regulation (CAR) notation for identification purposes, have not yet been incorporated into the CAR. However, all of these items are binding for this acquisition and will eventually be contained in the CAR at Part 13 of Title 48 of the Code of Federal Regulations.

L.9 INQUIRIES

Inquiries and all correspondence concerning this solicitation document should be submitted in writing to the issuing office. OFFERORS ARE INSTRUCTED SPECIFICALLY TO CONTACT ONLY THE PERSON CITED IN BLOCK 9 OF SF1442 ABOUT ANY ASPECT OF THIS REQUIREMENT PRIOR TO CONTRACT AWARD.

L.10 AMENDMENTS TO PROPOSALS

Any changes to a proposal made by the offeror after its initial submittal shall be accomplished by replacement pages. Changes from the original page shall be indicated on the outside margin by vertical lines adjacent to the change. The offeror shall include the date of the amendment at the bottom of the changed pages.

L.11 POST-AWARD CONFERENCE

A post award conference with the successful offeror is required. It will be scheduled and held within 15 days after the date of contract award. The conference will be held at:

Department of Commerce
325 Broadway,
Boulder, CO 80303-3328

L.12 SET-ASIDE INFORMATION

This solicitation includes the following set-aside criteria:

- (a) Percent of the set-aside: 100%
- (b) Type of set-aside: Total, Small Business

L.13 SERVICE OF PROTESTS

An agency level protest may be filed with either the Contracting Officer or the Agency Protest Decision Authority. Procedures for filing an agency protest with the Protest Decision Authority are contained in the Agency Protest Procedures Clause contained in Section L herein.

Agency protests filed with the Contracting Officer shall be sent to the following address:

L.13 (Continued)

Sheryl L. Winds
DOC, MASC, MC3
325 Broadway
Boulder, CO 80303-3328

If a protest is filed with the General Accounting Office (GAO), a complete copy of the protest and all attachments shall be served upon the Contracting Officer as well as the Contract Law Division of the Office of General Counsel within one day of filing with GAO. Service upon the Contract Law Division is to be made as follows:

U.S. Department of Commerce
Contract Law Division
Office of the General Counsel
Herbert C. Hoover Building
14th Street and Constitution Avenue, NW
Room 5893
Washington, DC 20230
Attn: Jerry Walz
FAX: (202) 482-5858

L.14 DEPARTMENT OF COMMERCE AGENCY-LEVEL PROTEST
PROCEDURES LEVEL ABOVE THE CONTRACTING
OFFICER (DEC 1996)

I. PURPOSE: To implement the requirements of Executive Order No. 12979 and Federal Acquisition Regulation (FAR 33.103).

On October 25, 1995, President Clinton signed Executive Order No. 12979 which directs heads of executive agencies to develop administrative procedures for resolving protests to awards of procurement contracts within their agencies at a level above the contracting officer. Authority to administer procurement-related directives has been delegated within the Department of Commerce through the Chief Financial Officer and Assistant Secretary for Administration to the Director for Acquisition Management (Procurement Executive).

The Department's goal is to encourage protesters to resolve their protests at the agency level, help build confidence in the Government's acquisition system, and reduce protests to the General Accounting Office and other external fora. Prior to submission of an agency protest, all parties shall use their best efforts to resolve concerns raised by an interested party at the contracting officer level through open and frank discussions. If concerns cannot be resolved, protesters may use these procedures when a resolution is requested from the agency at a level above the contracting officer.

L.14 (Continued)

II. DEFINITIONS:

An agency protest is one that may be filed with either the contracting officer or the protest decision authority but not both. When a protester decides to file a protest at the agency level with the protest decision authority, the guidelines set forth in these established agency level protest procedures above the contracting officer apply. These procedures are in addition to the existing protest procedures contained in the Federal Acquisition Regulation (FAR) Part 33.102. A day is a calendar day. In computing a period of time for the purpose of these procedures, the day from which the period begins to run is not counted. When the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, when the Washington, DC offices of the Department of Commerce are closed for all or part of the last day, the period extends to the next day on which the Department is open.

III. PROCEDURES:

- a. Protesters using these procedures may protest to the protest decision authority who will make the final decision for the Department. Protests shall be addressed to:

Mr. Jorge R. Urrutia
Director of Administration
National Institute of Standards and Technology
Building 101, Room A1105
Gaithersburg, Maryland 20899
FAX No. 301-926-7203

The outside of the envelope or beginning of the FAX transmission must be marked "Agency-level Protest". The protester shall also provide a copy of the protest within 1 day to the responsible contracting officer and a copy to the addressee indicated below:

Contract Law Division
Office of the Assistant General Counsel for Finance and
Litigation
Department of Commerce, Room H5882
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230
(FAX Number 202-482-5858)

- b. Election of forum: While a protest is pending at the agency level with the protest decision authority, the protester agrees not to protest to the General Accounting Office (GAO) or any other external fora. If the protester has already filed with the GAO or other external fora, the procedures described

L.14 (Continued)

here may not be used.

1. Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or time set for receipt of proposals shall be filed prior to bid opening or the time set for receipt of proposals. If the contract has been awarded, protests must be filed within 10 days after contract award or 5 days after the date the protester was given the opportunity to be debriefed, whichever date is later. In cases other than those covered in the preceding two sentences, protests shall be filed not later than 10 days after the basis of the protest is known or should have been known, whichever is earlier.
2. To be filed on a given day, protests must be received by 4:30 PM current local time. Any protests received after that time will be considered to be filed on the next day. Incomplete submissions will not be considered filed until all information is provided.
3. To be complete, protests must contain the following information:
 - (i) the protester's name, address, telephone number, and fax number
 - (ii) the solicitation or contract number, name of contracting office and the contracting officer
 - (iii) a detailed statement of all factual and legal grounds for protests, and an explanation of how the protester was prejudiced
 - (iv) copies of relevant documents supporting protester's statement
 - (v) a request for ruling by the agency
 - (vi) statement as to form of relief requested
 - (vii) all information establishing that the protester is an interested party for the purpose of filing a protest
 - (viii) all information establishing the timeliness of the protest.

All protests must be signed by an authorized representative of the protester.

L.14 (Continued)

Within 14 days after the protest is filed, the contracting officer will prepare an administrative report that responds to the issues raised by the protester and addresses any other issues, which, even if not raised by the protester, have been identified by agency officials as being relevant to the fairness of the procurement process. For good cause shown, the protest decision authority may grant an extension of time for filing the administrative report and for issuing the written decision. When an extension is granted, the protest decision authority will notify the protester and all interested parties within 1 day of the decision to grant the extension.

Unless an extension is granted, the protest decision authority will issue a decision within 35 days of the protest. The protest decision authority's final decision will be binding on the Department of Commerce and not subject to further appeals.

The protest decision authority shall send a written ruling and a summary of the reasons supporting the ruling to the protester by certified mail, return receipt requested with information copies to the applicable contracting office and Office of Acquisition Management.

Effect of protest on award and performance:

When a protest is filed prior to award, a contract may not be awarded unless authorized by the Head of the Contracting Activity (HCA) based on a written finding that:

- (i) the supplies or services are urgently required,
- (ii) delivery or performance would be unduly delayed by failure to make the award promptly, or
- (iii) a prompt award will be in the best interest of the Government.

When a protest is filed within 10 days after contract award or 5 days after a debriefing date was offered to the protester under a timely debriefing request in accordance with FAR 15.1004, whichever is later, the contracting officer shall immediately suspend performance pending the resolution of the protest within the agency, including any review by an independent higher official, unless continued performance is justified. The HCA may authorize contract performance, notwithstanding the

L.14 (Continued)

protest, based on a written finding that:

- (i) contract performance would be in the best interest of the United States, or
- (ii) urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for a decision.

IV. REMEDIES:

The protest decision authority may grant one or more of the following remedies:

- (1) terminate the contract,
- (2) re-compete the requirement,
- (3) issue a new solicitation,
- (4) refrain from exercising options under the contract,
- (5) award a contract consistent with statutes and regulations,
- (6) amend the solicitation provisions which gave rise to the protest and continue with the procurement,
- (7) such other remedies as the decision-maker may determine are necessary to correct a defect.

L.15 INSTRUCTIONS FOR THE PREPARATION OF TECHNICAL AND COST OR PRICING PROPOSALS

(a) General Instructions

The following instructions establish the acceptable minimum requirements for the format and content of proposals:

- (1) Any resultant contract shall include the general provisions applicable to the selected offeror's organization and type of contract awarded. Any additional clauses required by public law, executive order, or acquisition regulations in effect at the time of execution of the proposed contract will be included.
- (2) The proposal must be prepared in two parts: a technical proposal and a price proposal. Each of the parts shall be separate and complete in itself so that evaluation of one may be accomplished independently from evaluation of the other. The technical proposal must not contain

L.15 (Continued)

reference to cost; however, resource information (such as data concerning labor hours and categories, materials, subcontracts, etc.) must be contained in the technical proposal so that the offeror's understanding of the statement of work may be evaluated. It must disclose the offeror's technical approach in sufficient detail to provide a clear and concise presentation that includes, but is not limited to, the requirement of the technical proposal instructions.

- (3) An original and four (4) copies each of the technical proposal and price proposal shall be submitted, clearly labeled with the Solicitation No. 52RANB00C019 and project title.
- (4) The Government will evaluate proposals in accordance with the evaluation criteria set forth in Section M of this RFP.

(b) Technical Proposal Instructions

The following topics shall be discussed in the offeror's proposal. These topics comprise the main criteria that will be evaluated for contract award, as described in Section M.

(1) Technical Approach

(a) Proposals which merely offer to conduct a program in accordance with the requirements of the Government's statement of work will not be eligible for award. The offeror must submit an explanation of its proposed technical approach in conjunction with the tasks to be performed in achieving the project objectives.

(b) The technical approach should be in as much detail as the offeror considers necessary to fully explain the proposed technical approach or method. The technical proposal should reflect a clear understanding of what is involved in this construction project.

(c) The technical proposal must include relevant specific technical experience for organizing a project of this magnitude. Information should be provided which will demonstrate the offeror's understanding and management of important events or tasks. The offeror must explain how the management and coordination of the "project" will be accomplished. Information should also be provided that demonstrates the offeror's ability to communicate, schedule, and plan the various tasks needed to meet the specified time frames for scheduling and construction.

L.15 (Continued)

(2) Qualifications and Experience

(a) The technical proposal must include a list of names and proposed duties of the key personnel assigned to this project. Their resumes should address currently held position/title, proposed project position/title, education, professional licensing and awards received, work experience and involvement in the projects listed in the Past Performance Summary. If no participation is indicated it will be assumed that there was no involvement. If the individual's involvement in the project was less than full-time indicate the approximate percentage of time the employee was dedicated to the job.

(b) Information should be provided as to how the offeror proposes to handle the on-site management of the project;

(c) Evidence that the offeror understands the requirements and specifications for the work to be accomplished;

(d) Evidence that the offeror has relevant specific project management and construction experience to manage the personnel proposed for this project.

(3) Past Performance

(a) A list of all contracts and subcontracts completed over the past five years, that have similar scope, requirements, and/or complexity to the project addressed by this solicitation. Contracts and subcontracts listed may include those entered into by the Federal Government, agencies of the State and local governments and commercial customers. Offerors that are newly formed entities without prior contracts should list contracts and subcontracts as required above for all key personnel. Include the following information for each contract and subcontract:

- Name of the contracting activity
 - Contract number
 - Contract type
 - Total contract value
 - Contract work
 - Contracting Officer and telephone number
 - Project Manager and telephone number
 - List of major subcontractors

L.15 (Continued)

(b) Offerors may provide information on problems encountered on the contracts and subcontracts identified above and corrective actions taken to resolve those problems. Offerors should not provide general information on their performance on the identified contracts. General information will be obtained from the references.

(c) Offerors may describe any quality awards or certifications that indicate the offeror possesses a high-quality process for the service required.

(d) Each offeror will be evaluated on his/her performance under existing and prior contracts for similar services. Performance information will be used for both responsibility determinations and as a significant evaluation factor against which offerors' relative rankings will be compared to assure best value to the Government. The Government will focus on information that demonstrates quality of performance relative to the size and complexity of the procurement under consideration. The Performance Information Form identified in Section J will be used to collect this information. References other than those identified by the offeror may be contacted by the Government with the information received and used in the evaluation of the offeror's past performance.

(e) Assessment of the offeror's past performance will be one means of evaluating the credibility of the offeror's proposal and relative capability to meet performance requirements. Information utilized will be obtained from the references listed in the proposal, other customers known to the Government, and others who may have useful and relevant information. Information will also be considered regarding any significant subcontractors, and key personnel records.

(f) Evaluation of past performance will often be quite subjective based on consideration of all relevant facts and circumstances. It will include determination of the offeror's commitment to customer satisfaction and will include conclusions of informed judgement. However, the basis for conclusions of judgement will be documented.

(g) If an offeror, or the proposed employees or key personnel for the offeror, do not have a past performance history relating to this solicitation, the offeror will not be evaluated favorably or unfavorably on this factor.

(4) Price Proposal

L.15 (Continued)

(a) Price proposals must be submitted in the form of firm fixed price offers. The price shall include the costs of all hardware, supplies, equipment, documentation, testing, transportation and any other costs, including profit, necessary to meet the requirements of this solicitation/contract. Proposals predicated upon the award of a cost reimbursement type contract will not be acceptable.

(2) Price proposals shall include a signed copy of the Standard Form 33, Solicitation, Offer, and Award; Section B - Supplies or Services and Prices; Section K - Representations, Certifications and Other Statements of Offerors.

(3) Price proposals must be submitted in a separate, sealed envelope, and the outside of the envelope shall be clearly and prominently marked "Price Proposal -- Solicitation No. 52RANB00C019.

NOTE: TO ENSURE THAT PRICES ARE NOT PREMATURELY OR INADVERTENTLY REVEALED, NO INFORMATION PERTAINING TO THE PRICING OF THE PROPOSAL SHALL BE INCLUDED IN THE TECHNICAL PORTION OF THE PROPOSAL.

SECTION M - EVALUATION FACTORS FOR AWARD

M.1 EVALUATION OF PROPOSALS AND AWARD OF CONTRACT

(a) General

All proposals received as a result of this solicitation will be evaluated by a Source Evaluation Board (SEB) in accordance with the evaluation factors outlined below. Weights and relative order of importance are indicated. The SEB will not have knowledge of the pricing of the proposals until their evaluation of the technical proposals is completed.

(b) Evaluation Factors

FACTOR	WEIGHT
Qualifications and Experience	50
Past Performance	30
Technical Approach	20

(c) Price proposals will be evaluated by a representative of the Contracting Office to determine that they are fair, reasonable and adequately reflect costs associated with the work described in the offeror's proposal.

(d) Final evaluation will be based on the offeror's proposal, as modified through negotiations and best and final offers, if applicable, in accordance with the evaluation factors and price evaluation.

(e) Award of the contract will be made, within the limit of available funding, to that offeror whose proposal contains the combination of those factors offering the best overall value to the Government. This will be determined by comparing differences in values of qualifications/experience, past performance and technical approach with differences in cost to the Government. In making this comparison the Government is more concern with making an award at the lowest overall cost to the Government than with obtaining superior history and technical approach. However, the Government will not make an award based on a proposal with significantly inferior history and technical approach features in order to achieve a small savings in costs.